



[Billing Code 6750-01-P]

FEDERAL TRADE COMMISSION

Public Workshop Examining Franchise Rule

AGENCY: Federal Trade Commission.

ACTION: Public workshop; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is holding a public workshop relating to its March 13, 2019 Request for Public Comment on the Franchise Rule (“2019 Request for Comment”). The workshop will explore issues relating to the Franchise Rule’s disclosure requirements, the Rule’s prohibitions against disclaimers, and other issues raised in comments received in response to the 2019 Request for Comment.

DATES: The public workshop will be held on November 10, 2020, from 1:00 p.m. until 4:30 p.m. ET. The workshop will be held online. Requests to participate as a panelist must be received by October 1, 2020. Any written comments related to the issues discussed at the workshop must be received by December 17, 2020.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist online or on paper, by following the instructions in the Filing Comments and Requests to Participate as a Panelist part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro (202-326-3711), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission issued the original Franchise Rule pursuant to its authority under Section 5 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.¹ The primary purpose of the Rule is to provide prospective purchasers of franchises the material information they need in order to weigh the risks and benefits of such an investment by providing disclosure requirements in a uniform format that facilitates comparison shopping.² The Commission adopted the Rule on December 21, 1978, and it became fully effective on July 21, 1979.³

In 1995, the Commission announced a regulatory review of the Franchise Rule.⁴ That proceeding, which concluded that the Rule was still needed but could be improved, led to amendments to the Rule issued in 2007 (the “Amended Rule”), which took effect on July 1, 2008.⁵ The Amended Rule, among other changes, sought to reduce inconsistencies between federal and state pre-sale disclosure requirements and established a set of uniform disclosure requirements in a Franchise Disclosure Document (“FDD”). Commission staff has continued to work closely with state franchise regulators to promote uniformity regarding franchise disclosure requirements.

The Amended Rule requires franchisors to provide prospective franchisees with their FDD at least 14 calendar days before they make any payment or sign a binding agreement in connection with a proposed franchise sale.⁶ The FDD provides prospective franchise purchasers with 23 items of information material to their investment decision,

¹ Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

² Original Franchise Rule Statement of Basis and Purpose (“Original SBP”), 43 FR 59614 (Dec. 21, 1978).

³ *Id.*

⁴ 60 FR 17656 (Apr. 7, 1995).

⁵ Amended Franchise Rule Statement of Basis and Purpose (“Amended Rule SBP”), 72 FR 15444 (Mar. 30, 2007).

⁶ 16 CFR 436.2(a).

including the initial fees and estimated initial investment required; the litigation and bankruptcy history of the franchisor, its officers and key executives; the financial performance of existing company owned and franchised outlets; contact information for current and former franchisees; and financial statements reflecting the ability of the franchisor to provide promised services and support. The FDD also includes required disclosure of any restrictions on the sources of goods and services and any required purchases; a franchisee's contractual obligations in the establishment and operation of the franchise; the terms of any financing offered by the franchisor; the training and assistance provided by the franchisor; the extent to which the franchisee's outlet is protected from competition by the franchisor and other franchisees; any restrictions on what the franchisee may sell; the circumstances in which the franchise may be prematurely terminated, or the franchisee's sale or renewal of the franchise refused by the franchisor; how and where any disputes will be resolved; any restrictions on the franchisee's ability to engage in the same or similar business during and after the termination of the franchise; and the number of outlets created, sold, and closed during the past three years. In addition, if the franchisor makes a financial performance representation, the representation must be disclosed in the FDD.

On March 13, 2019, the Commission solicited comments on the Amended Rule as part of its periodic review of its rules and guides.⁷ The Commission sought comment on a number of general issues, including whether there is a continuing need for the Rule; what modifications, if any, should be made to the Rule to increase its benefits to prospective franchisees; and what modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions. The Commission received 39

⁷ Franchise Rule, Request for Comment, 84 FR 9051 (March 13, 2019).

comments from individuals and entities representing a wide range of viewpoints.⁸ All commenters agreed that there is a continuing need for the Rule.⁹ Several commenters, however, proposed changes to the Rule, including to the form and substance of the disclosures.

II. Issues for Discussion at the Workshop

As part of the Franchise Rule regulatory review, the FTC has decided to seek additional information about the proposed modifications raised by the commenters. The workshop will cover such topics as:

- 1) Item 19 financial performance representations;
- 2) The use of disclaimers; and
- 3) The format of the FDD.

An agenda will be published at a later date, in advance of the scheduled workshop.

III. Public Participation Information

A. Workshop Attendance

The workshop is free and open to the public, and will be held online. It will be webcast live on the FTC's website. This event may be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image—and anything you say or submit—may be posted indefinitely at

<https://www.ftc.gov> or on one of the Commission's publicly available social media sites.

⁸ The comments are posted at: <https://www.regulations.gov/document?D=FTC-2019-0014-0001>. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

⁹ See, e.g., International Franchise Association, FTC-2019-0014-0008; Congress of the United States – Members of Congress, FTC-2019-0014-0003; North American Securities Administrators Association, Inc., FTC-2019-0014-0032.

B. Requests to Participate as a Panelist

The workshop will be organized into panels, which will address the designated topics. Panelists will be selected by FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before October 1, 2020, as explained in Section IV below. Persons selected as panelists will be notified on or before October 17, 2020.

Disclosing funding sources promotes transparency, ensures objectivity, and maintains the public's trust. If chosen, prospective panelists will be required to disclose the source of any support they received in connection with participation at the workshop. This information will be included in the published panelist bios as part of the workshop record.

C. Electronic and Paper Comments.

The submission of comments is not required for participation in the workshop. If a person wishes to submit electronic or paper comments related to the issues discussed at the workshop, such comments should be filed as prescribed in Section IV, and must be received on or before December 17, 2020.

IV. Filing Comments and Requests to Participate as a Panelist

You can file a comment, or request to participate as a panelist, online or on paper. The deadline to file a comment is December 17, 2020. For Commission staff to consider your request to participate as a panelist, we must receive it by October 1, 2020. Write "Franchise Rule, 16 CFR 436, Comment, Matter No. R511003" on your comment and "Franchise Rule, 16 CFR 436, Request to Participate, Matter No. R511003" on your

request to participate. Your comment—including your name and your state—will be placed on the public record of this proceeding, including <https://www.regulations.gov>.

Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To make sure that the Commission considers your online comment, follow the instructions on the web-based form.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that

accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record.¹⁰ Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Requests to participate as a panelist at the workshop should be submitted electronically to franchiserule@ftc.gov, or, if mailed, should be submitted in the manner detailed below. Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a telephone number and email address (if available), to enable the FTC to notify them if they are selected.

If you file your comment or request on paper, write “Franchise Rule, 16 CFR part 436, Comment, Matter No. R511003” on your comment and on the envelope or “Franchise Rule, 16 CFR part 436, Request to Participate, Matter No. R511003,” on your request and on the envelope, and mail your comment or request to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex F), Washington, DC 20580, or deliver your comment or request to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex F). If possible, submit your paper comment or request to the Commission by courier or overnight service.

¹⁰ See 16 CFR 4.9(c).

Visit the Commission website at <https://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 17, 2020. The Commission will consider all timely requests to participate as a panelist in the workshop that it receives by October 1, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission, Commissioner Slaughter not participating.

April J. Tabor,

Acting Secretary.

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